pliance with what counsel appearing for them before him referred to as 'certain formalities' required by the Grant, and which we have already adverted to. The principles enunciated in *In re Tempest, supra,* which we have referred to have been correctly applied and we would add that Turner L.J., in that case made it clear that it would be going too far to say that the court ought to refuse to appoint the proposed trustee merely on an objection raised by the continuing or surviving trustee as this would be to give the latter a veto upon the appointment of the new trustee, and that in such a case it must be the duty of the court to inquire and ascertain the validity of any such objection and to act or refuse to act upon it accordingly. If there was any valid and sustainable objection to the meeting convened for the election of the 2nd respondent or the manner in which he was elected and any other alleged non-compliance with the terms of the Grant or otherwise to his appointment, this should in our view have come, if at all, from one or more members of the Burmese community in Penang as the trustee was elected for appointment to represent the interests of that community. These matters have nothing to do with the Thai trustees and we regret to have to say that in taking the objections and adopting the attitude they did in the matter of the appointment of the 2nd respondent, the appellants assumed an over-officious and ultracrepidarian role in things that were no concern of theirs. *Ne sutor ultra crepidam* — let the cobbler not go beyond his last.

We accordingly dismissed the appeal with costs here and in the court below, both to be borne by the appellants personally on the higher scale and not out of trust funds. The deposit in court by way of security will be paid out to the respondents to account of their costs.

Appeal dismissed.

Solicitors: *Lawrence & Joseph; Thillaimuthu & Phock Kin.*

TAN TOO KIA v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Wan Suleiman & Ibrahim Manan F.JJ.) February 28 & May 16, 1980]

[Kuala Lumpur — Federal Court Criminal Appeal No. 11 of 1979]

Criminal Law and Procedure — Charge of trafficking in raw opium — Confession to police officer — Whether confession voluntary — Trial within a trial — Allegation of assault by police officer — Police officer in court but not called to contradict accused — Language used in interrogation — Accused should understand the language used.

In this case the accused had been found guilty of the offence of trafficking in raw opium and sentenced to life imprisonment. The only evidence against the accused was his confession under caution to the police. After a trial within a trial the learned trial judge held that the confession was voluntary. The accused had alleged that he was assaulted by a number of police officers, including an Inspector. The Inspector was present in court but was not called to contradict the accused. It was also alleged on the appeal that the accused whose mother tongue was Teochew did not understand the Hokkien used to interrogate him.

Held: (1) as the Inspector was specifically identified at the trial within a trial as one of the persons who had assaulted the accused, he should have been called by the prosecution to contradict the accused;

(2) failure by the prosecution to do so should have made the learned trial judge scrutinise with great care the voluntariness of the alleged confession, particularly in a very serious case like this for which the punishment is death or life imprisonment;

(3) generally speaking it is desirable that a suspect be interrogated in a language in which he is at home. What is important is that a person interrogated should understand the language used by the interrogator.

Case referred to:-

(1) *Public Prosecutor* v. *Ibrahim Mastari* — See Appendix.

[The following cases were also cited in argument: *Re Pichi Muthu* [1970] 2 M.L.J. 143; *Chua Beow Huat* v. *Public Prosecutor* [1970] 2 M.L.J. 29; *Director of Public Prosecutions* v. *Ping Lin* [1975] 3 All E.R. 175; *R.* v. *Prager* [1972] 1 All E.R. 1114.]

FEDERAL COURT.

Karpal Singh for the appellant.

Mah Weng Kwai (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): We are of opinion that this appeal should be allowed.

The accused was found guilty of the offence of trafficking in over 33 lbs of raw opium contrary to section 39B(1)(a) of the Dangerous Drugs Ordinance 30 of 1952, and sentenced to life imprisonment. The only evidence against the accused is his confession made under caution to Inspector Ang, PW11, which was considered as voluntary and admitted in evidence by the learned trial judge. Without this confession, there would be no evidence whatsoever against the accused.

Mr. Karpal Singh contended first that the confession was not voluntary and accordingly a trial within a trial was held to decide this issue.

Secondly, he contended that the appellant whose mother tongue was Teochew did not quite understand the language (Hokkien) used by the Inspector.

During the trial within a trial, only Inspector Ang and the accused gave evidence. The accused said in examination-in-chief that he was in the lock-up at Seremban. At about 2.30 p.m. the Inspector took him from the lock-up first to a room where he was assaulted. In that room there were many persons, including Inspector Md. Lias, PW5, who had earlier given evidence in the general trial. Inspector Ang and Inspector Lias had a conversation. Inspector Ang left the room. Then the persons in the room asked him to whom those things (meaning the opium) belonged. The accused said he did not know. They, including Inspector Lias, started hitting him. They punched him on the stomach. The accused was handcuffed; an officer, unidentified, hooked the accused up by the handcuffs on the wall. Others started hitting him on his back and front. He was in that room for more than 30 minutes.

In cross-examination he said that he did not complain about the assault to the police, as he did not know how to make a report.

Questioned by the court he said that he was hung up from the hook for about 10 minutes, with his feet off the ground. That hurt his wrists on which there were bruises, which remained for about two weeks. He did not seek any treatment.

In examination-in-chief the accused also said that after he had been beaten up in this way, he was taken to a second room where there were only him and Inspector Ang, who then recorded a statement from him. He said that he did not show the bruises to the Inspector, nor told him about them. The Inspector did not assault him, but simply threatened him.

The voluntariness of the confession being in issue, it was up to the prosecution to prove beyond reasonable doubt that it was voluntary. They did not however call him to contradict the accused, though Inspector Lias was in court. Nevertheless, the learned Deputy submitted that it was admissible because, he said, Mr. Karpal Singh had not, when the Inspector was giving evidence earlier, cross-examined him. The learned judge agreed.

We are of the opinion that this failure by Mr. Karpal Singh was not fatal. The voluntariness of the statement was not in issue when Inspector Lias was giving evidence earlier in the general trial. It came into issue only during the trial within a trial. As the Inspector was specifically identified at the trial within a trial as one of the persons who had assaulted the accused, he should have been called by the prosecution to contradict the accused. It would have been very easy for the prosecution to call the Inspector because he had been identified and was available. Failure by the prosecution to do so should have made the learned trial judge scrutinize with great care the voluntariness of the alleged confession, particularly in a very serious case like this for which the punishment is death or life imprisonment.

With respect we agree with Choor Singh J. in *Public Prosecutor* v. *Ibrahim Mastari*,[1] an unreported case referred to by *S. Chandra Mohan* in his article "Admissibility and use of Statements made to Police Officers — Re-examination (Part II)", when he said:

"If the accused alleges that he was assaulted by a police officer" — who has been identified — "and that in consequence thereof he made an incriminating statement, the prosecution must call the officer concerned to give evidence not only for the purpose of assisting the court to ascertain the truth of the allegation but also for the purpose of giving him an opportunity to rebut the accused's allegation."

In view of our conclusion on Mr. Karpal Singh's first contention, it is unnecessary for us to say anything about his second, for anything we say on it would be *obiter*. Nevertheless, we would observe that generally speaking it is desirable that a suspect be interrogated in a language in which he is at home; but we would not go further by saying that if his mother tongue is Teochew he must be interrogated only in Teochew, and that if he is not, his statement is necessarily inadmissible. To do so would unnecessarily tie up the hands of the police in remote parts of the country, such as Ulu Kelantan or Upper Perak. This is a multi-racial and multi-lingual country, and we cannot shut our eyes to the fact that many Malaysians have not one, but two, mother tongues, and while they are master of no particular language, yet converse easily in several languages for every day purposes. This is especially so among the Chinese, for many of them understand at least two Chinese dialects. What is important is that a person interrogated should understand the language used by the interrogator. In most cases a suspect is not being asked about concepts and abstract ideas, to express which he needs to be questioned and to speak in a language he is most at home in; but about events and concrete things. About these he may be questioned and is expected to give his own version only in language of the kind ordinarily used in the bazaar.

The appellant's conviction is quashed and sentence set aside.

Appeal allowed.

Solicitor: *Karpal Singh & Co.*

APPENDIX

PUBLIC PROSECUTOR v. IBRAHIM BIN MASTARI

[O.Cr.J. (Choor Singh J.) March 9, 1966]

[Singapore — Emergency Criminal Case No. 5 of 1965]

Criminal Law and Procedure — Cautioned Statement — Not recorded in accordance with rules — Caution — Questions put to accused — Interpretation — Allegation of assault by police — Public officer should be called to contradict allegation — Necessity of giving caution before questioning accused — Evidence Ordinance (Cap. 4), s. 27 Criminal Procedure Code (Cap. 132), s. 121(5).

Evidence — Statement leading to discovery of fact — Accused in custody — Necessity for caution — Criminal Procedure Code (Cap. 132), s. 121(5) — Evidence Ordinance (Cap. 4), s. 27.

In this case the accused was charged with possession of explosives. The evidence against him consisted of (a) a cautioned statement recorded from him and (b) evidence that he made a statement and led the police party to his house where the explosives were found buried.

Held: (1) the cautioned statement was not admissible as it was not recorded in accordance with the provisions of the rules relating to statements from accused persons laid down in Schedule E of the Criminal Procedure Code;

(2) the proper caution was not given to the accused. It is essential that the caution should be explained to him in his own language or a language which he understands and the court must be satisfied that the officer recording the statement and the accused fully understand each other;

(3) where an accused person alleges that he was assaulted by a police officer and that in consequence thereof he made an incriminating statement, it is desirable for the prosecution to call the officer in question as a witness so that the officer can give his version of the incident;

(4) Section 27 of the Evidence Ordinance must be read subject to section 121(5) of the Criminal Procedure Code. When the prosecution desire to invoke section 27 they must satisfy the court that the information received from the accused which is tendered under section 27 of the Evidence Ordinance was received after the caution had been properly administered. In this case as the accused had not been properly cautioned, his statement that he had buried the explosives in the compound of his house was inadmissible.

EMERGENCY CRIMINAL CASE.

Choor Singh J. (delivering oral judgment): The cautioned statement made by the accused in this case is not admissible in evidence because it was not recorded in accordance with